

March 9, 1998

Ms. Carol Browner, Administrator
United States Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Ms. Browner:

Re: Docket Number A-96-56

The Indiana Department of Environmental Management (IDEM) appreciates the opportunity to provide comment on the U.S. Environmental Protection Agency's (USEPA) November 7, 1997, proposal for regional reductions of nitrogen oxide (NO_x) emissions. IDEM's comments include this letter, the enclosed letter signed by Governor O'Bannon and ten other Governors, and the other enclosed documents, which address numerous specific technical and policy issues presented by USEPA's proposed action.

Indiana has been extremely active both in working to remedy ozone air quality problems within and near Indiana and to assist those areas of the country with serious ozone pollution problems to reach attainment through reductions in background ozone levels. Indiana was an active participant in the Ozone Transport Assessment Group. We were committed to that group's achieving consensus on a set of recommendations that would establish the direction for practical measures, implemented by the states, to reduce transported ozone and to assist urban areas across the country in meeting the ozone standards.

While we strongly support the Ozone Transport Assessment Group recommendations and the need for regional reductions of Nitrogen Oxides (NO_x), we have numerous concerns about the specific requirements contained in the proposed rule. These concerns relate to USEPA's assumptions about Indiana's NO_x emission inventory, the appropriate and achievable NO_x emission levels, the timeframes for compliance, the costs of compliance, as well as USEPA's overall approach to determining the state emissions budgets.

The enclosures to this letter address many of these issues in detail. Our most basic concerns are that:

* USEPA has provided an inadequate public comment period that is inconsistent with the one-

year timeframe for further state evaluation of this issue on a subregional basis as discussed during the Ozone Transport Assessment Group process. We urge that USEPA extend the comment period until at least August 1998 and not finalize the proposal until November 1998 at earliest.

* USEPA has proposed a level of NO_x emission reduction that, based on the available science, exceeds that demonstrated to be necessary to appropriately reduce contribution of Indiana facilities outside of Indiana. We urge that USEPA reconsider their approach and work with states like Indiana and others to develop an alternative that accomplishes our mutual clean air goals.

* USEPA has proposed a timeframe for compliance that is impractical given the physical changes necessary at many facilities in order to achieve the level of proposed reductions. We urge that USEPA establish a practical, achievable compliance schedule consistent with the final NO_x emission levels.

I will highlight some of Indiana's key concerns with the proposed rule.

Regional NO_x reductions will improve Indiana's air quality but the appropriate level of reduction is not yet known.

Indiana has two regions that are currently nonattainment of the one hour ozone standard (northwest Indiana as part of the Lake Michigan region and southeast Indiana as part of the Louisville metropolitan region). Regional NO_x reductions will certainly improve air quality and the public health of the citizens in those four counties, and will enable us to develop attainment plans for both regions. In our state, there are five additional regions that will likely not be in compliance with the new, eight hour ozone standard. Regional NO_x reductions will also help those areas address local air quality problems.

Indiana is both an exporter and a recipient of transported ozone. We recognize our responsibility under the Clean Air Act to reduce pollution caused by Indiana sources that has adverse impacts on air quality in our downwind neighbor states. We also believe that Indiana citizens and businesses cannot and should not be responsible for offsetting with local control measures the effects of pollution created in upwind states.

For both these reasons, Indiana is supportive of regional NO_x reductions. However, as I will explain below, at this time we cannot agree that the level of NO_x reduction proposed by USEPA for Indiana, or any other state, is appropriate or warranted given the actual impact of Indiana emissions on downwind nonattainment areas.

USEPA should provide the time discussed in the Ozone Transport Assessment Group study and allow states and others one year to develop technical data to evaluate the proposed reduction levels

At the conclusion of the Ozone Transport Assessment Group process, it became clear that USEPA intended to issue a NO_x reduction rule based on OTAG's technical work. It was

also clear to all parties that states would need to conduct further air quality modeling, on a state and sub-regional basis, and at a level of resolution finer than OTAG was able to do. This additional modeling work was felt by all parties to be essential for the development of a regional strategy that would be effective in reducing transported ozone, but also cost effective. In response to states' urging, USEPA committed to provide states an appropriate amount of time, on the order of 9 months, to conduct that modeling work.

Indiana, like many other stakeholders, was distressed at the 120-day comment period provided for the proposed rule. Four months is simply inadequate for states and other interested parties to complete the necessary technical work. Indiana, alone and in combination with other Lake Michigan Air Directors Consortium (LADCO) states, immediately began to prepare to conduct additional air quality modeling upon the completion of the OTAG work and the publication of USEPA's proposed NOx strategy. We will continue to work diligently to complete sufficient air quality analyses by this summer to make an informed final response to USEPA.

In addition to the time needed to perform additional modeling, the four months provided have been inadequate because of the unavailability of basic information from USEPA. This includes both USEPA's assumptions about states' emissions inventories and USEPA's own modeling results, which purportedly support the proposed NOx reduction numbers.

Indiana is conducting the following technical work to enable us to fully respond to the proposed NOx rule:

- * Subregional modeling that examines both the effects of varying levels of NOx control and also the impact of NOx reductions on the Chicago area, where an ozone disbenefit has previously been demonstrated. We expect this work to be completed by June 1998.
- * Investigation into the costs and practical issues associated with the significant level of reduction assumed by USEPA for electric utilities and nonutility boilers. This work includes gathering extensive, detailed information from Indiana sources and working with the Indiana Utility Consumer Counselor and the Indiana Utility Regulatory Commission to determine the potential impacts on Indiana citizens and businesses. We expect this work to be complete by May 1998.
- * A thorough review of the emissions inventory assumptions made by USEPA in the proposed rule. Indiana, like most other states, has found numerous discrepancies between USEPA's emissions numbers and the information we have developed about Indiana NOx sources. We expect this work to be complete by April 1998, though if significant errors or discrepancies come to our attention after that date, we will evaluate their impact on the proposed NOx budget and submit the appropriate corrections and adjustments to USEPA.

We will supplement our comments early this summer with the information referenced above.

USEPA's approach of establishing a budget based on EPA's judgement of cost is not tied to air quality benefits and ignores probable regional variations in both the effectiveness of the strategy in reducing ozone transport and the cost of the required control measures.

USEPA has clearly articulated that it has calculated each state's NO_x budget based on what it believes to be cost-effective control technology, rather than on an analysis of what level of control is necessary to reduce the state's contribution to transported ozone. This approach could be appropriate, if it were impossible to evaluate the impact that specified levels of control will have on local and downwind ozone levels. Such evaluations are possible, however, if not perfect, and states and others will be submitting their results to USEPA as part of this rulemaking.

The potential costs of implementing the controls proposed by USEPA are so substantial that it is incumbent upon the decision-makers, both state and federal, to consider the pros and cons, including the costs and effectiveness, of all reasonable scenarios.

The subregional modeling work done since the conclusion of OTAG does not support the finding that emissions from Indiana contribute significantly to any but the closest states.

As noted above, IDEM agrees that Indiana is both a recipient and exporter of ozone and ozone precursors. However, the subregional modeling performed since the conclusion of OTAG, as well as the OTAG modeling itself, does not support a finding that Indiana emissions are contributing significantly to any state further east than West Virginia. The greatest impact of Indiana sources is within the state itself. It is for this reason that Indiana is evaluating the SIP call from the perspective of what it will take to improve air quality throughout Indiana so that the eight-hour standard will be met across the state. IDEM does not believe that this rulemaking is about midwest versus northeast air quality issues, rather that the country should work together to address these issues throughout the eastern United States.

USEPA's approach does not acknowledge demonstrated instances where NO_x reductions actually cause ozone increases, in densely populated urban areas, on days when ozone levels are high.

USEPA has calculated Indiana's NO_x budget assuming across the board NO_x reductions from all sources in the state. This assumption is contrary to the finding of the LADCO states, and the agreement of USEPA, that NO_x reductions in the Chicago/Northwest Indiana severe nonattainment area cause increases in ozone levels, on at least some days when ozone levels are high. Although those same NO_x reductions do help reduce ozone levels further downwind, the four LADCO states successfully argued in the USEPA approved NO_x waiver that requiring controls that would lead to the exposure of

potentially millions of people to **increased** air pollution was neither good public policy nor required by the Clean Air Act.

In our request for the NO_x waiver, the LADCO states acknowledged that further technical work might lead to a refinement of the original position, in which case the states would propose to USEPA that the waiver be amended or rescinded in whole or in part. The states have a modeling project underway now to examine the effects of NO_x reductions much more closely in the nonattainment area, and will be submitting the results of that analysis, along with any conclusions about the future of the NO_x waiver, to USEPA within several months.

Without those results, Indiana is unable to comment conclusively on USEPA's disregard of the NO_x waiver in the proposed SIP call. However, we explicitly preserve this issue for further comment, when the technical work is completed. Furthermore, if our ultimate conclusion is that the waiver should remain in place for some or all of the Lake and Porter County NO_x sources, Indiana believes that USEPA should deduct from Indiana's NO_x reduction target an amount of NO_x equal to the reductions that would be achieved by those sources. It is not appropriate, without a technical demonstration that it is necessary to achieve attainment in Indiana or a downwind nonattainment area, for sources in the rest of the state to have to make up the NO_x reductions that would have been required of Lake and Porter County sources.

USEPA predicts that the regional NO_x reductions required by the rule will bring most new eight-hour ozone nonattainment areas into attainment. This assertion is not supported by technical work and it undermines the efforts of states and local communities to be proactive with local clean air plans.

In numerous public information documents, press releases and other materials, USEPA has stated its belief that the regional NO_x reductions would be sufficient to bring most of the new nonattainment areas (under the eight-hour standard) into attainment, without the need for further local measures. Based on the technical work Indiana has reviewed, including OTAG results, Indiana does not agree with this conclusion, at least for some of the expected nonattainment areas within our state. IDEM would be interested in seeing USEPA's technical support for this assertion. Moreover, this "don't worry, the utilities will fix it" approach, which seems to be motivated by a desire to soften the anticipated impacts of the revised ozone and fine particulate standards in the public perception, could seriously undermine the efforts of any local areas to be proactive by implementing local measures.

IDEM agrees that states must be allowed to design their own NO_x reduction strategies.

IDEM agrees with USEPA's approach that specific control measures are not mandated in the SIP call. However, we note that given the substantial reductions called for, states do not have flexibility. It is unlikely that any state will be able to achieve its proposed budget

without implementing the very measures assumed by USEPA.

The compliance periods proposed in the rule are clearly inadequate given the significant reductions required.

IDEM will provide further comment on this issue in its supplemental comments submitted later this spring, after we have developed additional information. At this point, however, we can clearly state that 2002 is for all practical purposes unachievable, given the nature of the control measures that will be needed. The number of utility units requiring controls, the length of time necessary for rulemaking, engineering, and construction of control devices make the proposed timeframe substantially inadequate. We will comment on whether the 2004 timeframe suggested by USEPA as an alternative is more achievable in our supplemental comments.

IDEM supports USEPA's agreement with the Northeast states relative to the timing of resolution of the Section 126 petitions.

IDEM was pleased that USEPA and the northeast states were able to resolve the timing of USEPA's actions on the petitions brought pursuant to Section 126 in a way that allows this SIP call process to proceed. As our state has indicated in previous correspondence to you and the northeast states themselves, we strongly believe that the consensus approach developed through the cooperative OTAG process should guide the development and implementation of solutions to the ozone transport situation.

IDEM agrees that a trading program will be necessary to enhance sources' ability to reduce NOx emissions in the most cost-effective way.

IDEM looks forward to reviewing USEPA's proposed model trading rule. A trading program will make the ultimate reductions goals more easily achievable, and provide needed flexibility to sources. IDEM cautions, however, that care must be taken with the directionality of trades, so that they do not cause unhealthy local air quality.

The emissions inventory relied upon by USEPA contains a number of errors, both in emissions calculations and growth assumptions. USEPA must allow states to correct those inventories and make necessary adjustment to the NOx budget, even if it takes longer than March 9.

IDEM's specific comments on USEPA's assumptions for Indiana's inventory are contained in the Emissions Inventory enclosure. As noted above, Indiana will complete any further inventory review as soon as possible. IDEM urges USEPA to be receptive to inventory improvements whenever they are identified. Air quality planning is only as good as the assumptions about existing and future emissions.

EPA promises guidance and workgroups on a number of issues (the expected elements of

the NOx reduction SIP, emissions tracking requirements, energy efficiency projects).

IDEM agrees that workgroups involving interested parties are advisable for the development of policies and guidance related to SIP development and implementation, as well as new programs, such as trading. Indiana has participated and is participating on such workgroups. However, time is quickly passing. Given how soon the NOx SIP deadline is, USEPA must act quickly to involve states and the public broadly in the development of these policies.

Thank you for your consideration of these comments. These comments are postmarked March 9, 1998, which was stated to be acceptable to meet the deadline by USEPA's contact in the November 7, 1998, Federal Register notice.

Sincerely,

John M. Hamilton
Commissioner

Enclosures